THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.21696 of 1997

DATED : 01.02.2007

Between:

Vuna Nagaraju S/o Vykunta Rao and another.

.... **PETITIONERS**

And:

The Chief Executive Officer,
A.P.State Wakf Board, Hyderabad,
and others.

....**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.21696 of 1997

ORDER:

This writ petition is filed seeking a declaration that the show cause notice, dated 24.04.1997, issued by the second respondent and the order of eviction, dated 24.08.1997, passed by the third respondent are arbitrary and illegal.

The case of the petitioners is that they are the absolute owners of property admeasuring 10,000 square feet out of 12,632 square feet covered by T.S.No.132/2 situated at old Srikakulam, having purchased the same under the registered sale deeds dated 11.11.1967 and 25.07.1986. While so, the first respondent issued a show cause notice dated 24.04.1997 calling upon the petitioners to explain as to why an order of eviction against them from the said land cannot be passed on the ground that the said land is wakf property and the petitioners are the

encroachers. Petitioners offered a detailed explanation narrating as to how they are entitled to the said land. However, without passing any orders on their explanation, the first respondent issued proceedings dated 24.08.1997 ordering eviction of the petitioners. Hence, this writ petition.

A detailed counter is filed by the first respondent stating that the property in question is a notified wakf property, and basing on the report of the Commissioner for Survey of Wakfs, a notification was also published in A.P.Gazettee No.47 dated 30.11.1961 and the said notification was not challenged by anyone. As the petitioners were found to be the encroachers of the said property, the impugned show cause notice was issued, and thereafter, the impugned order of eviction was passed. Hence, it is concluded that the petitioners have no right, whatsoever, in the said property, and therefore, the writ petition is liable to be dismissed.

Heard the learned counsel for both the parties.

Section 54 of the Wakf Act, 1995 (for short 'the Act'), deals with removal of encroachments from wakf property. According to sub-Section (1) of Section 54 of the Act, on receipt of a complaint, the Chief Executive Officer, Wakf Board, shall cause notice specifying the particulars of encroachment and call upon the said encroacher to show cause as to why an order requiring him to remove the encroachment shall not be passed. Sub-section (2) of Section 54 of the Act deals with the mode and manner in which the said notice shall be served. According to sub-section (3) of Section 54 of the Act, on consideration of the

objections and also after conducting enquiry in such a manner as may be prescribed, the Chief Executive Officer may order eviction. According to sub-section (4) of Section 54 of the Act, if an order is passed by the Chief Executive Officer, the encroacher, against whom an order of eviction is passed, can institute a suit to establish his rights.

Adverting to the facts of the case, it is clear that the first respondent having issued a notice under sub-section (1) of Section 54 of the Act on 24.04.1997, without considering the explanations offered by the petitioners and without holding any enquiry, passed an order of eviction under sub-section (3) of Section 54 of the Act on 24.08.1997. Though a detailed counter is filed by the first respondent, nothing is mentioned as to whether the respondents have followed the above procedure under the Act before passing the impugned order of eviction. Hence, it is clear that the impugned order is in violation of principles of natural justice.

In the light of the above, the writ petition is disposed of, and the order of eviction dated 24.08.1997 passed by the third respondent is hereby set aside, and the first respondent is directed to pass appropriate orders after holding enquiry and after considering the explanation offered by the petitioner to the show cause notice dated 24.04.1997. It is needless to mention that till such exercise is completed, the petitioners shall not be dispossessed from the said property. There shall be no order as to costs.

01.02.2007

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